

1 technique documented in this chapter is covered by U.S. Patent 5,367,685.” TX 25 at 389. The
2 ’685 patent is the predecessor to the ’104. *See* TX 4015 at 1. Google’s argument that all claims
3 of the ’104 patent are broader than the claims of the ’685 patent (ECF 311) means that the ’104
4 would cover the technology described in the chapter as well.

5 Despite his concern that it was “dangerous” to proceed without knowing what Sun’s
6 intellectual property covered (TC 1128 at Rubin Dep. Tr. 16:4-16), Mr. Rubin never asked
7 Mr. Lindholm—or anyone else on his team—to review any Sun patents or investigate whether
8 Android technology might infringe one of Sun’s patents. RT 3140:17-3141:1 (Rubin), 3027:11-
9 3028:4 (Lindholm).

10 To counter this evidence, in its closing statement, Google trotted out the Jonathan
11 Schwartz November 2007 blog post yet again, claiming it showed Sun had no concerns about
12 Google’s patent infringement. RT 4193:2-13 (Google closing). But Android’s source code was
13 not publicly released until October 21, 2008—*almost a full year later*. RT 1719:10-18 (Rubin).
14 Google had not even finished developing the Android source code in November 2007, let alone
15 publicly released it. *See* RT 1507:20-1508:18 (Schmidt). Mr. Schmidt’s alleged conversations
16 with Mr. Schwartz similarly took place in late 2007 and early 2008 (*id.* at 1537:3-18)—again,
17 well before Google’s source code was released and Sun could have known of Google’s
18 infringement.

19 When the source code was released, Sun was in discussions with Google over a license to
20 Java. *See, e.g.*, TX 1058 (Oct. 7, 2008 Gupta email to Rubin) (“Many thanks for taking time to
21 kick the discussion off yesterday”). These discussions continued. On November 24, 2008,
22 Mr. Rubin wrote that Sun had asked him “to certify Android through the Java process and
23 become licensees of Java.” TX 1002. In February 2009, Brett Slatkin proposed to Eric Schmidt
24 that Google buy the rights to Java and “solve all these lawsuits we’re facing.” TX 406 at 1.
25 Schmidt wrote back “Certainly a clever idea. I’ll ask our team to pursue.” TX 406 at 1. The
26 proposal was also forwarded to Tim Lindholm and Bob Lee, the lead Android core libraries
27 developer. TX 326.
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